

CRIMINAL REFERENCE.

Before Mr. Justice Marten and Mr. Justice Crump.

In re MARUTI BABAJI SONAR^e.

1922.

May 10.

Bombay District Police Act (Bombay Act IV of 1890), sections 57, 58 (2)†
—Finding of property—Proclamation issued by Magistrate for preferring claim to the property—No claim preferred—Finder entitled to the property.

A person who finds property is entitled to it, when, after a proclamation issued under section 58 (2) of the Bombay District Police Act, 1890, by a Magistrate, no one comes forward to claim it as his own.

*Criminal Reference No. 25 of 1922.

† The sections run as follows:—

57. The police shall take temporary charge of all unclaimed property found by or made over to them; and shall deliver all such property to the police-patel, if any, of the town or village in which the same was found, and take a receipt therefor from the patel who shall forward such property to the Magistrate to whom such police-patel is subordinate. If in any such case there be no police-patel of such town or village, the police shall forthwith report to such Magistrate as the Magistrate of the District shall, from time to time, appoint in this behalf, and act thereafter as the said first-mentioned Magistrate shall direct.

58. (1) If the property regarding which a report is made to a Magistrate under the last preceding section or under section 19 of the Bombay Village Police Act, 1867, appears to such Magistrate to have been left by a person who has died intestate and without known heirs and to be likely, if sold in public auction, to realise more than ten rupees net proceeds, he shall communicate with the District Judge with a view to its being dealt with under the provisions of section 10 of Regulation VIII of 1827, a *Regulation to provide for the formal recognition of heirs, &c.*, or other law in force.

(2) In any other case the Magistrate shall issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before himself or some other officer whom he appoints in this behalf and establish his claim within six months from the date of such proclamation. If no person within such period establishes his claim to such property, it shall be at the disposal of Government, and may be sold in public auction under the orders of the Magistrate.

(3) The provisions of section 10 of the Regulation aforesaid shall be deemed not to apply to intestate property which is dealt with by a Magistrate under sub-section (2).

1922.

MARUTI
BABAJI
In re.

THIS was a reference made by J. W. Smith, District Magistrate of Nasik.

The facts were that the applicant found on a public road a bundle containing currency notes and miscellaneous articles. The bundle was handed over to the Sub-Inspector of Police; and was duly forwarded to the City Magistrate, for orders under section 57 of the Bombay District Police Act, 1890. The Magistrate issued a proclamation with reference to the property under section 58 of the Act; but no one came forward to establish his claim to it. The applicant applied for the return of the currency notes. The Magistrate, however, was of opinion that the applicant could not claim the property merely on the ground that he was the finder, but that he must show that he owned it. The proceeds of the property were accordingly ordered to be credited to Government.

The District Magistrate being of opinion that the order passed by the lower Magistrate was not correct, referred the case to the High Court.

There was no appearance on either side.

MARTEN, J.:—This is a somewhat curious case. A boy found some property, and very properly handed it over to the Police for enquiries to be made. The Magistrate thereupon under the Bombay District Police Act IV of 1890 issued a proclamation for the true owner. No such owner has come forward, and eventually the Magistrate sold the property, and has made an order vesting the sale proceeds of the property in Government.

It does not seem at first sight clear why the Government should get the property and why the boy who found the property and who *prima facie* is entitled to

it in the absence of the true owner, should be deprived of it.

1922.

MARUTI
BABAJI
In re.

On investigation we find that this very point has been decided in this High Court by Mr. Justice Russell and Mr. Justice Chandavarkar in 1911 where almost precisely a similar case arose from Ahmedabad. There a similar course had been taken by the Magistrate, but that decision was set aside by the High Court, and the property was ordered to be restored to the finder. Moreover, the papers afterwards went before the Government and were subsequently printed and circulated for general information amongst the Magistrates and other judicial officers in the mofussil.

That precedent we propose to follow in the present case. When this matter came before this High Court originally there was no such reference by the District Magistrate as we have now got. So now, as regards mere procedure, we are in the same position as in the Ahmedabad case.

Accordingly the order made by the learned Magistrate will be set aside, and the property or rather the sale proceeds will be ordered to be restored to the original finder.

I may add that I doubt whether the learned Magistrate had any jurisdiction to sell these goods without the consent of the finder; but our order can only deal with the property now before us, viz., the proceeds of sale.

CRUMP, J. :—I agree.

Order accordingly.

R. R.